



Master Grocers Australia Limited

T/AS

MGA Independent Retailers

MGA Timber Merchants Australia

(MGA/TMA)

Casual terms award review 2021

Note on Fair Work Commission Provisional Views

23 June 2021

View 1: Is it the case that the Commission does not have to address the considerations in s.134(1) of the Act in varying an award under Act Schedule 1 cl.48(3), but an award as varied under cl.48(3) must satisfy s.138 of the Act?

1. Contested.

View 2: Is an award clause that excludes casual employment (as in the Fire Fighting Award) a 'relevant term' within the meaning of in Act Schedule 1 cl.48(1)(c), so that the award must be reviewed in the Casual terms review?

2. Not contested.

View 3: Has Attachment 1 to the Discussion Paper wrongly categorised the casual definition in any award?

3. Not contested.

View 4: For the purposes of Act Schedule 1 cl.48(2):

is the 'engaged as a casual' type casual definition (as in the Retail Award, Hospitality Award and Manufacturing Award) consistent with the Act as amended, and

does this type of definition give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?

4. Contested.

View 5: For the purposes of Act Schedule 1 cl.48(2), are the employment arrangements described as 'casual' under Part 9 of the Pastoral Award consistent with the definition of 'casual employee' in s.15A of the Act?

5. Not contested.

View 6: For the purposes of Act Schedule 1 cl.48(2):

are 'paid by the hour' and 'employment day-to-day' casual definitions (as in the Pastoral Award and Teachers Award) consistent with the Act as amended

are 'residual category' type casual definitions (as in the Retail Award and Pastoral Award) consistent with the Act as amended, and

do such definitions give rise to uncertainty or difficulty relating to the interaction between these Awards and the Act as amended?

6. Contested.

View 7: Where a casual definition includes a limit on the period of casual engagement (as in the Teachers Award), if the definition is amended in the Casual terms review should that limit be recast as a separate restriction on the length of any casual engagement?

7. Not contested.

View 8: For the purposes of Act Schedule 1 cl.48(3), would replacing the casual definitions in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award with the definition in s.15A of the Act or with a reference to that definition, make the awards consistent or operate effectively with the Act as amended?

8. Contested.

View 9: If an award is to be varied to adopt the casual definition in s.15A of the Act, should the Commission give advanced notice of the variation and the date it will take effect?

9. Contested.

View 10: For the purposes of Schedule 1 cl.48(2):

are award requirements to inform employees when engaging them that they are being engaged as casuals (as in the Manufacturing Award and Pastoral Award) consistent with the Act as amended, and

do these requirements give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?

10. Not contested.

View 11: For the purposes of Act Schedule 1 cl.48(2):

are award definitions that do not distinguish full-time and part-time employment from casual employment on the basis that full-time and part-time employment is ongoing employment (as in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award) consistent with the Act as amended, and

do these definitions give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?

11. Contested.

View 12: Does fixed term or maximum term employment fall within the definition in s.15A of the Act?

12. Not contested.

View 13: Are outdated award definitions of 'long term casual employee' and outdated references to the Divisions comprising the NES (as in the Retail Award and Hospitality Award) relevant terms?

13. Contested.

View 14: If they are not relevant terms, but nevertheless give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended:

can they be updated under Act Schedule 1 cl.48(3), or alternatively

can they be updated in the course of the Casual terms review by the Commission exercising its general award variation powers under Part 2-3 of the Act?

14. Contested.

View 15: Are award clauses specifying:

minimum casual payments (as in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award)

casual pay periods (as in the Retail Award, Hospitality Award and Pastoral Award)

minimum casual engagement periods (as in the Hospitality Award), and

maximum casual engagement periods (as in the Teachers Award)

relevant terms?

15. Contested.

View 16: For the purposes of Act Schedule 1 cl.48(2):

are such award clauses consistent with the Act as amended, and

do such award clauses give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?

16. Contested.

View 17: Is provision for casual loading (as in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award) a relevant term?

17. Contested.

View 18: If provision for casual loading is a relevant term:

for the purposes of Act Schedule 1 cl.48(2), does the absence of award specification of the entitlements the casual loading is paid in compensation for (as in the Hospitality Award, Manufacturing Award cl.11.2 and the Teachers Award) give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended, and

if so, should these awards be varied so as to include specification like that in the Retail Award or the Pastoral Award?

18. Contested.

View 19: Are any of the clauses in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award that provide general terms and conditions of employment of casual employees (not including the clauses considered in sections 5.1–5.5 and 6 of this paper) ‘relevant terms’ within the meaning of Act Schedule 1 cl.48(1)(c)?

19. Contested.

View 20: Whether or not these clauses are 'relevant terms':

are any of these clauses not consistent with the Act as amended, and

do any of these clauses give rise to uncertainty or difficulty relating to the interaction between the awards and the Act as amended?

20. Contested.

View 21: Is it the case that the model award casual conversion clause (as in the Retail Award and Pastoral Award) is detrimental to casual employees in some respects in comparison to the residual right to request casual conversion under the NES, and does not confer any additional benefits on employees in comparison to the NES?

21. Contested.

View 22: For the purposes of Act Schedule 1 cl.48(2):

is the model award casual conversion clause consistent with the Act as amended, and

does the clause give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?

22. Contested.

View 23: For the purposes of Act Schedule 1 cl.48(3), would removing the model clause from the awards, or replacing the model clause with a reference to the casual conversion NES, make the awards consistent or operate effectively with the Act as amended?

23. Contested.

View 24: If the model clause was removed from the awards, should other changes be made to the awards so that they operate effectively with the Act as amended (for example, adding a note on resolution of disputes about casual conversion)?

24. Contested.

View 25: Is the Manufacturing Award casual conversion clause more beneficial than the residual right to request casual conversion under the NES for casual employees employed for less than 12 months, but detrimental in some respects in comparison to the NES for casual employees employed for 12 months or more?

25. Not contested.

View 26: For the purposes of Act Schedule 1 cl.48(2):

is the Manufacturing Award casual conversion clause consistent with the Act as amended, and

does the clause give rise to uncertainty or difficulty relating to the interaction between the award and the Act as amended?

26. Not contested.

View 27: For the purposes of Act Schedule 1 cl.48(3), would confining the Manufacturing Award clause to casual employees with less than 12 months of employment and redrafting it as a clause that just supplements the casual conversion NES, make the award consistent or operate effectively with the Act as amended?

27. Not contested.

View 28: Is the Hospitality Award casual conversion clause more beneficial than the residual right to request casual conversion under the NES for any group of casual employees?

28. Not contested.

View 29: Is the Hospitality Award casual conversion clause detrimental in any respects for casual employees eligible for the residual right to request casual conversion under the NES?

29. Not contested.

View 30: For the purposes of Act Schedule 1 cl.48(2):

is the Hospitality Award casual conversion clause consistent with the Act as amended, and does the clause give rise to uncertainty or difficulty relating to the interaction between the award and the Act as amended?

30. Not contested.

View 31: For the purposes of Schedule 1 cl.48(3), would removing the Hospitality Award casual conversion clause from the award, or replacing it with a reference to the casual conversion NES, make the award consistent or operate effectively with the Act as amended?

31. Not contested.

View 32: If the casual conversion clause was removed from the Hospitality Award, should other changes be made to the award so that it operates effectively with the Act as amended (for example, adding a note on resolution of disputes about casual conversion)?

32. Not contested.

Other matters: The State Government Agencies Award 2020 should be dealt with in Group 4 rather than Group 3 of the Review so that its casual terms can be considered in the same group as the Victorian State Government Agencies Award 2015.

33. Not contested.